Supreme Court, U.S.
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No.

In the Supreme Court Of the United States

October Term, 1994

STEVEN AUGUSTUS, ET AL.

Petitioners

VERSUS

STATE OF LOUISIANA, THROUGH ITS GOVERNOR, EDWIN EDWARDS, ET AL.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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QUESTIONS PRESENTED

Whether the Louisiana Judiciary can be impartial as required by the Due Process Clause of the Fourteenth Amendment in adjudicating the issue of returning money unconstitutionally exacted by and for the benefit of the Judiciary.

Whether the Louisiana Supreme Court failed to recognize a cause of action under the Fifth Amendment for the return of money unconstitutionally taken by the Judiciary from presumed innocent arrestees as a commission for allowing the exercise of the fundamental right to bail.

Whether the Louisiana Supreme Court failed to recognize a cause of action for the return of seized property under the Fourth Amendment where the Judiciary demanded money from presumed innocent arrestees as a condition precedent to the exercise of their fundamental right to bail.

Whether, in addition to the Fourth and Fifth Amendments, the Louisiana Supreme Court's arbitrary and capricious failure to apply a statutory provision (applicable to a small percentage of petitioners) which mandated the return of money taken by the Judiciary, violates the Due Process Clause of the Fourteenth Amendment.

Whether the Louisiana Supreme Court failed to recognize a cause of action under the Equal Protection Clause of the Fourteenth Amendment where money taken under duress by the Judiciary from presumed innocent arrestees as a condition precedent to the exercise of their fundamental right to bail was arbitrarily and capriciously returned to some arrestees but not to others.

Whether the Louisiana Supreme Court failed to recognize a cause of action for a federal constitutional tort where money was unconstitutionally taken by the Judiciary under duress from presumed innocent arrestees as a commission for allowing the exercise of the right to bail.

Whether money taken by a state judiciary through duress from presumed innocent arrestees as a commission for allowing the exercise of their fundamental right to bail should be classified as taxation or confiscation, and, if the former applies, whether Louisiana's tax refund statute is unconstitutionally vague under the Fourteenth Amendment.

PARTIES TO THIS PROCEEDING

PLAINTIFFS:

Steven Augustus, Jerry Berry, Wendell Gillan, Lee Gray, Wayne Scott, LeRoy Turner, Patricia Singleton, Alvin Williams, Bryan Bradham, Francisco A. Piedra, Rickie A. Foley, Bridget Ingram, Timothy F. Simons, Earl Everson, Neff Gomez, Gerald Hebert, Roy Johnson, Kenneth Charles Saulsberry, Bobby Rembert, Columbus Chris Williams, and all other persons or entities who paid or promised to pay money under the four statutes involved in this proceeding.

DEFENDANTS:

The State of Louisiana, through its Governor, Edwin Edwards,;

The judges of the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, including: G. Thomas Porteous, Jr., Ernest V. Richards, Jr., Susan Chehardy, Walter E. Kollin, Clarence E. McManus, Patrick J. McCabe, M. Joseph Tiemann, Hubert A. Vondenstein, Charles V. Cusimano,II, Jacob L. Karno, Douglass Allen, Robert J. Burns, Alvin Oser, Ronald P. Loumiet, Martha Sassone, Jody Grant, Joseph. Grefer;

The judges of the Thirty-Second Judicial District Court for the Parish of Terrebonne, State of Louisiana, including: Edward J. Gaidry, Baron B. Bourg, Timothy C. Ellender, John T. Pettigrew, Paul R. Wimbish;

The judges of the Criminal District Court for the Parish of Orleans, State of Louisiana, including: Leon A. Cannizaro, Jr., Shirley G. Wimberly, Jr., James F. Shea, Calvin Johnson, Dennis J. Waldron, Frank A. Marullo, Jr., Jerome M. Winsberg, Miriam Waltzer, Patrick G. Quinlan.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioners pray that a writ of certiorari issue to review the opinion of the Louisiana Supreme Court entered in this case on June 24, 1994.

OPINIONS BELOW

The denial of certiorari by the Louisiana Supreme Court to the Louisiana Fifth Circuit Court of Appeal is reported at __So.2d __ (No. 94C 1084 La. 1994) and is set out in Appendix, *infra*, p. A-2. The affirmance of the state district court decision by the Louisiana Fifth Circuit Court of Appeal, 636 So.2d 1218 (No. 93-CA-890, Ct.App. 5th Cir. 1994), is unpublished and set out in the Appendix, *infra*, p. A-3 to p. A-11. The judgment of the Twenty Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, is unpublished and set out in the Appendix, *infra*, p. A-12 to p. A-15.

JURISDICTION

The judgment of the Louisiana Supreme Court denying certiorari was entered on June 24, 1994. The jurisdiction of this Court rests on 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

This is a class action suit by petitioners against the State of Louisiana, the Governor of Louisiana, the judges of the district courts of Jefferson and Terrebonne Parishes, and the judges of the Criminal District Court of Orleans Parish, for restitution of a statutory fee exacted under duress from arrestees by district judges as a condition precedent to pretrial release from jail. The state district court dismissed petitioners' suit on exceptions of no cause of action. The state appellate court affirmed the dismissal and the state supreme court denied certiorari without comment by a vote of four to three.

This sordid affair began when the Louisiana Legislature, at the request of the district judges in Orleans, Jefferson, and Terrebonne Parishes, passed four statutes authorizing the judiciaries in Orleans, Jefferson, and Terrebonne Parishes to exact from arrestees a 2% charge on the face amount of all commercial, property, and personal surety appearance bonds, and a $20.00 charge on all recognizance bonds, as a condition precedent to pretrial release from jail. For convenience, the laws (see Appendix, *infra*) are referred to hereinafter as "Old Jefferson Law" (p.A-16-p.A-17), "New Jefferson Law" (p.A-16-p.-A-17), "Orleans Law" (p.A-18), "Terrebonne Law" (p.A-19), and are referred to collectively as "the four statutes." The Old Jefferson Law became the New Jefferson Law when it was amended to delete a provision mandating the return of money taken from arrestees who were not subsequently convicted. The three judiciaries enacted local court rules implementing the four statutes. Arrestees were forced to either pay the charge, promise to pay the charge, or forgo their right to bail and stay in jail.

A series of lawsuits was filed and consolidated in the U.S. District Court for the Eastern District of Louisiana challenging the constitutionality of the four statutes, requesting

injunctive relief against their enforcement, and seeking the return of all money collected. Augustus vs. Roemer, 771 F.Supp. 1458 (E.D.La. 1991). The issues in the federal proceeding were bificurated so that an initial trial could be limited to the constitutionality of the four statutes on their face. A Minute Entry dated March 14, 1991 was issued by United States District Judge Henry A. Mentz, Jr. ordering that an initial trial be held in which "the only issue presented will be whether La.Rev.Stat.Ann. 13:994 (Old and New Jefferson Laws) is constitutional on its face." A Minute Entry dated May 17, 1991 by Judge Mentz made the March 14, 1991 Minute Entry applicable to all of the consolidated cases. Trial was held on June 5, 1991. No live testimony was presented. Briefs were presented by all parties regarding only the constitutionality of the four statutes on their face. On July 16, 1991, Judge Mentz, borrowing an adjective from the Louisiana Supreme Court in State vs. Waggoner, 8 So. 209,211 (La. 1890), rendered Judgment analogizing the 2% charge to extortion and holding the four statutes unconstitutional on their face because they: violated procedural due process; constituted per se excessive bail; violated the Equal protection Clause of the Fourteenth Amendment. Augustus vs. Roemer, *supra*.

The decision of the federal district court broke new ground. It was the first federal decision to squarely decide whether and to what extent the Eighth Amendment right to bail is a fundamental constitutional right. Recognizing the futility of challenging the sound reasoning of the federal district judge, the defendant judiciaries dismissed their appeal shortly after filing a notice of appeal with the United States Fifth Circuit Court of Appeal. Petitioners then turned to state court to seek restitution of the money which had been taken from them in their criminal proceedings under duress pursuant to the enjoined unconstitutional statutes.

Petitioners filed suit for return of their money in the Twenty-Fourth Judicial District Court for The Parish of Jefferson, State of Louisiana. The grounds alleged in the lawsuit include state statutes, state constitution, and federal constitution, including the following: Louisiana Code of Civil Procedure Article 2541 for recognition of the federal judgment by the Louisiana Judiciary; Louisiana Civil Code Articles 2301, et seq. for restitution of payment of a thing not owed (quasi-contractual claim); LSA-R.S. 15:41 for the return of property seized in connection with a criminal proceeding; return provision of Old Jefferson Parish Statute (Act 158 of 1989);

state and federal constitutional tort; 42 U.S.C. §1983; Fourteenth Amendment Equal Protection and Due Process Clauses; Fifth Amendment; and, Fourth Amendment.

The lawsuit created a political quagmire for the Louisiana Judiciary. The money collected under the enjoined statutes went into a fund exclusively controlled by the district judges. State judges are elected in Louisiana. Petitioners' lawsuit asked the Louisiana Judiciary to order fellow elected judges in two of the biggest parishes in the state to return money collected under circumstances likened to extortion by a federal judge. The defendants filed two sets of peremptory exceptions including exceptions of res judicata, no cause of action, no right of action, prescription, and mootness. All of the district judges of the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana recused themselves. The Louisiana Supreme Court appointed a retired judge from Chalmette to hear the case, but he withdrew. The Louisiana Supreme Court appointed a second retired judge from Shreveport who also withdrew. The Louisiana Supreme Court appointed a third retired judge from Nachitoches[1], Louisiana. The third retired judge appointed to hear the case, without

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[1](pronounced *Nakitish*).

conducting an evidentiary hearing, dismissed the suit on the ground of no cause of action, finding plaintiffs' claims against the judges barred by judicial immunity and their claims against the State barred by sovereign immunity. The district court did not rule on defendants' other exceptions and did not comment on petitioners' federal constitutional claims. Petitioners appealed to the Louisiana Fifth Circuit Court of Appeal, which, coincidentally, shares a courthouse with the defendant judiciary from Jefferson Parish. The court of appeal, in an **unpublished** opinion, affirmed the district court's dismissal solely on the ground of no cause of action. In particular, the appellate court clarified that although the district judge had discussed his view of how prescription would apply to petitioners' tort theory of liability (but not petitioners' quasi-contractual or constitutional claims), the exceptions of no cause of action were the only exceptions ruled on. Petitioners then filed a writ application for certiorari with the Louisiana Supreme Court. Even though the Louisiana Supreme Court had granted certiorari and remanded a previous writ application on the same issue filed by a single arrestee in State v. Jones, 586 So.2d. 521 (La. 1991) (See Appendix, *infra*, p. A-22), the Court, without comment, refused to grant the writ and review the matter by a vote of four to three on June 24, 1994. (See Appendix, *infra*, p.A-2).

The basic question presented to this Court is whether Louisiana must recognize a cause of action for restitution to petitioners who each paid up to several thousand dollars under duress to a fund exclusively controlled by district judges to obtain pretrial release on bail.

REASONS FOR GRANTING THE WRIT

It took unconscionable conduct by state district judges for a federal district judge to quote language comparing such conduct to extortion and to break new ground by deciding the fundamental nature of the Eighth Amendment right to bail. Certiorari should be granted in this case because the failure of the Louisiana Judiciary to return money exacted under duress from presumed innocent arrestees as the judiciary's commission for allowing the exercise of a fundamental constitutional right is contra to the Fourth, Fifth, and Fourteenth Amendments and the appearance of judicial impartiality.

ARGUMENT

Petitioners presented the state courts with a number of claims for the return of their money under Louisiana Statutes, the Louisiana Constitution, and the United States Constitution. The state judiciary dismissed petitioners' suit solely on the ground of no cause of action without any comment on most of the state statutory grounds or any comment whatsoever on the state or federal constitutional grounds. The basic question presented to this Court is whether the state and the three concerned judiciaries must afford a judicial remedy for restitution of petitioners' money under one or more of the federal constitutional grounds discussed below.

I. The Louisiana Supreme Court Cannot Be Impartial As Required By The Due Process Clause Of The Fourteenth Amendment.

Two factors make this case unique: 1) The money involved was exacted from presumed innocent arrestees **under duress** by and for the exclusive economic benefit of the judiciary; 2) In a state where district, appellate, and supreme court judges are elected, it is impossible for any level of the state judiciary to be neutral in adjudicating the return of money wrongfully exacted by the judiciary itself.

There have been other cases where state and local governments have violated the federal constitution by charging money for the exercise of a fundamental constitutional right. Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 86 S.Ct. 1079 (1966) struck down a Virginia law that required voters to pay $1.50 as a condition precedent for exercising their right to vote in state elections. But there has never been another case where a state judiciary exacted **under duress** amounts ranging from $20.00 to $2000.00 from presumed innocent arrestees as a condition precedent to exercising their fundamental constitutional right to freedom through bail. Duress elevates this case from the realm of a constitutional violation to the realm of a constitutional atrocity. If state judges are allowed to keep the money obtained under duress by selling fundamental constitutional rights to arrestees, what will keep state government from selling convicted inmates the fundamental right to be free from cruel and unusual punishment? What will keep state government from selling release from prison after a sentence has been completed? There is no dis-incentive for state government to refrain from enacting such unconstitutional and unconscionable laws if it gets to keep the ill-gotten gains exacted before a federal injunction is rendered.

The Court in Marshall v. Jerrico, Inc., 446 U.S. 238,242, 100 S.Ct. 1610,1613 (1980), stated:

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the law. At the same time, it preserves both the appearance and reality of fairness, generating the feeling, so important to popular government, that justice has been done, by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.
>
> The requirement of neutrality has been jealously guarded by this Court.

It would be extremely detrimental to the campaign fund raising ability of district, appellate, or supreme court judges in Louisiana to order the dozens of district judges in Orleans, Jefferson, and Terrebonne Parishes to make restitution of money currently under their exclusive control. Even the Louisiana Supreme Court Justices have to run for reelection in the same districts as the defendant-judges. The only way for petitioners to obtain an impartial hearing on whether the United States Constitution affords them a remedy is for the United States Supreme Court to adjudicate same.

II. The Louisiana Supreme Court Failed To Recognize A Cause Of Action For The Return Of Property Taken For Public Use Without Just Compensation Under The Fifth Amendment.

The pertinent words of the Fifth Amendment are: "nor shall private property be taken for public use, without just compensation." Petitioners argued in their state court proceeding that their property (money) had been unconstitutionally taken and converted to public (the district judges') use. The Court in Webb's Fab. Pharmacies, Inc. vs. Beckwith, 449 U.S. 155, 101 S.Ct. 446 (1980), held that a Florida statute which allowed a county to take possession of interest accruing on an interpleader fund deposited in the registry of the county court was a taking violative of the Fifth and Fourteenth Amendments. In that case the depositor of the fund had **voluntarily** exercised its option to avail itself of statutory protection from the claims of creditors. Florida's statutory scheme allowing the court to keep the interest on the voluntarily deposited fund looks benign compared to Louisiana's scheme allowing district judges to use **duress** to demand a commission from presumed innocent arrestees for their freedom through bail. It is important to note that the

Florida scheme did not involve a fundamental constitutional right whereas the Louisiana scheme involved the fundamental right to bail. The Court in Webb's Fab. Pharmacy, like the Court in Augustus, supra, 1469-1470, held that the money involved was not a "fee for services." Id., 449 U.S.,162. The Court described the money as "a forced contribution to general governmental revenues" and the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent. That clause stands as a shield against the arbitrary use of governmental power." Id., 449 U.S.,163-164. Like the plaintiffs in Webb's Fab. Pharmacy, the taking of petitioners' money was a matter of confiscation, not simply a matter of taxation.

III. The Louisiana Supreme Court Failed To Recognize A Cause Of Action For The Return Of Property Seized In Violation Of The Fourth Amendment.

The 2% charge was exacted/seized from arrestees in their criminal proceedings. Petitioners asserted in their state court pleadings that the Fourth Amendment requires the return of all such unconstitutionally seized money. The state courts did not comment on this claim. Both Louisiana and the United States have rules of criminal procedure to deal with the return

of money seized in a criminal proceeding. LSA-R.S 15:41 provides in pertinent part:

> B) (1) The seized property shall be returned to the owner, unless a statute declares the property to be contraband, in which event the court shall order the property destroyed if the court determines that its destruction is in the public interest; otherwise, paragraph (2) of this Section shall apply.
>
> 2) If the seized property is contraband . . .

Federal Rule Of Criminal Procedure 41 (e) provides in pertinent part:

> A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property. . . .

LSA-R.S 15:41 and Federal Rule Of Criminal Procedure 41 (e) are designed to comply with government's obligations under the Fourth Amendment. The Court in Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294,308, 87 S.Ct. 1642,1650 (1967) stated: "Where public officials unlawfully seize ***or hold*** a citizen's realty or chattels, recoverable by appropriate action at law or in equity . . ., the true owner may bring his possessory action to reclaim that which is wrongfully withheld." (citations omitted, emphasis in original). The Fourth Amendment requires the return of petitioners' money.

IV. In Addition To The Fourth And Fifth Amendments, The State Court's Arbitrary And Capricious Failure To Apply A Provision In The Old Jefferson Law Mandating The Return Of The 2% Charge To Non-Convicted Arrestees, Violates Due Process Under The Fourteenth Amendment.

Perhaps the clearest example of the Louisiana Judiciary's lack of neutrality and the Louisiana Legislature's lack of constitutional conscience is the amendment to the Old Jefferson Law that resulted in the New Jefferson Law. The only difference between the Old Jefferson Law and the New Jefferson Law is one sentence (See Appendix, *infra*, p.A-16-p.A-17). The following sentence appeared in the Old Law but not in the New Law.

> The fee herein collected shall be refunded to the defendant if he is determined to be not guilty or if the charges are dismissed.

The state courts refused to recognize a cause of action for petitioners who paid the 2% charge under the Old Jefferson Statute. The state appellate court erroneously found: "There is no statutory authority, however, for refund of the bail bond fees." (See Appendix, *infra*, p.A-9)

> The legislature or supreme authority cannot assume to itself a power to rule by extemporary, arbitrary decrees, but is limited to decide the rights of the subject by promulgated, standing laws, and known authorized judges. J. Locke, The Second Treatise of Civil Government, Chap. X, § 136 (T. Cook ed. 1947) (6th ed. 1764).

The Court in Bounds v. Smith, 430 U.S. 817,823, 97 S.Ct. 1491,1495 (1977) stated that Fourteenth Amendment Due Process requires "adequate," "effective," and "meaningful," access to the courts. Petitioners have stated a cause of action under the exact wording of the Old Jefferson Statute. The Louisiana Courts cannot arbitrarily and capriciously deny petitioners' access to the courts to prosecute this cause of action.

V. The Louisiana Supreme Court Failed To Recognize A Cause Of Action Under The Equal Protection Clause Of The Fourteenth Amendment.

The test of strict judicial scrutiny applies to state statutes which interfere with the exercise of fundamental rights and liberties explicitly or implicitly protected in the Constitution. San Antonio Independent School District v. Rodriguez, 411 U.S. 1,16, 93 S.Ct. 1278,1287 (1973). Even where no fundamental right is implicated, classifications based on "invidious discrimination" have been held unconstitutional under the rational basis test. Rinaldi v. Yeager, 384 U.S. 305,309, 86 S.Ct. 1497,1500 (1966).

Because the 2% bail fee was a prior restraint on the exercise of the fundamental right to bail, the application of the four statutes should be closely scrutinized. The Louisiana Courts did not comment on petitioners' equal protection argument despite being presented with proof that some arrestees received restitution. (See Appendix, *infra*, p.A 20-A-21.) In State vs. Jones, 586 So.2d 521 (La. 1991), the 2% charge was returned by the Orleans Parish Judiciary. An evidentiary hearing would prove that the 2% charge was returned to others besides Jones in Orleans Parish. Jones' money was returned by the Orleans Parish Judiciary, but only the Old Jefferson Law mandated the return of the 2% charge to non-convicted arrestees. Did the three judiciaries and the State have a compelling interest in returning the 2% charge to some arrestees but not others? Were the district judges arbitrary and capricious in selecting which arrestees and which attorneys' clients got their money back and which did not? Why were some arrestees treated differently than others with regard to the return of their 2% bail bond fee? This factual issue constitutes a classic cause of action under the Equal Protection Clause of the Fourteenth Amendment.

VI. The Louisiana Supreme Court Failed To Recognize A Cause Of Action For Federal Constitutional Tort.

Petitioners' cause of action sounding in tort is similar to the claim of federal constitutional tort in Bivens vs. Six Unknown Named Agents of Fed. Bur. Of Narc., 403 U.S. 388, 91 S.Ct. 1999 (1971). In that case a complaint alleging that agents of the Federal Bureau of Narcotics made a warrantless entry of the plaintiff's apartment, searched the apartment and arrested the plaintiff on narcotics charges, all without probable cause, stated a cause of action under the Fourth Amendment of the United States Constitution for damages. Petitioners alleged in their state court proceeding that defendants wrongfully took and withheld money belonging to petitioners. The Louisiana Supreme Court failed to recognize this cause of action for federal constitutional tort.

VII. The Louisiana Supreme Court Failed To Recognize A Cause Of Action Under The Fourteenth Amendment Due Process Clause That The Louisiana Tax Refund Statute Is Unconstitutionally Vague And Ambiguous.

Section 40 of the Magna Carta states that among the duties government owes to its subjects is that:

> To no one will we sell, to no one will we refuse or delay, right or justice.[2]

The state courts, without conducting an evidentiary hearing, made an erroneous factual determination that the money exacted from petitioners in their criminal proceedings was a tax. Under Mckesson v. Division of Alcoholic Beverages & Tobacco, 496 U.S. 18, 110 S.Ct. 2238 (1990), the remedial aspects of an unconstitutional tax statute are provided for in a tax refund statute. However, the money exacted from petitioners cannot be classified as a tax within the scope of McKesson. The Court in Augustus, *supra*, after discussing National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974), and then analogizing the 2% bail charge to extortion, analyzed the 2% bail charge as a tax, as a court cost, and as a penalty.

> We fail to see, though, how requiring a bond to be posted and then charging a ***fee*** for safekeeping confers a benefit on anyone but the state. And, as to sending out notices, due process requires such notices to be sent prior to hearings . . . .To the extent that the 2% charge **penalizes** or **taxes** the exercise of the fundamental right to pretrial release once eligibility to release has been determined, we agree with the plaintiffs that such a tax or penalty is per se excessive." Augustus, *supra*, 1471 and 1471 fn. 25.

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[2]The original Latin text reads: "Nulli vendemus, nulli negabimus, aut differemus, rectum aut justiciam."

The 2% charge was intended as a type of court cost. The Orleans Parish Law (Appendix, *infra*, p. A-18) is entitled *BAIL BOND **FEE***. The word *fee* appears eight times in the statute. Like a court cost in a civil case, the statute provided that "this **fee** is imposed for the purpose of funding the administration and forfeiture of such bonds." Like a court cost in a civil case, the charge could be waived for indigents or anyone else at the discretion of the district judges and was to "be deposited in the criminal court cost fund of the criminal district court." The New Jefferson Parish Law (Appendix, *infra*, p. A-16-p. A-17) begins: "In addition to all other **fees** or costs now or hereafter provided by law, there is hereby imposed a **fee** on each bail bond . . ." The word *fee* appears eight times in the Jefferson Parish Law. The statute called the charge a bail bond *fee* which could be waived for indigents. The Terrebonne Parish Law (Appendix, *infra*, p. A-19) was identical to the Jefferson Parish Law (as amended). Clearly, the intent of the four unconstitutional statutes was to impose a court cost type of fee on bail bonds.

But, under the reasoning of the Court in Augustus, *supra*, petitioners' money does not meet the legal definition of a tax or a fee. It is simply money unconstitutionally seized by a

judiciary through duress. The Court in Augustus looked to an 1890 decision from the Louisiana Supreme Court to find an appropriate label for the bail bond charge. Id.,1471 fn. 23. The Court quoted State vs. Waggoner, 8 So. 209,211 (La. 1890) which held that exacting $1.00 from arrestees "as a condition precedent to the release of his person from custody" is "**extortionate**." In that case a state statute provided:

> The sheriffs throughout the state shall be entitled to demand and receive the following fees of office . . . . For taking bond in all cases, civil or criminal, when by law the sheriff is required to take bond, $1.00. Id.

The United States Supreme Court is not bound by the characterization given to state action by a state legislature or by a state judiciary when that action affects federal constitutional rights. If a state statute calls a charge a fee, and the state judiciary calls the charge a tax, and a federal court likens the charge to extortion, the United States Supreme Court has a duty to examine the real nature of the charge where federal constitutional rights are concerned. Carpenter v. Shaw, 280 U.S. 363,367-368, 50 S.Ct. 121,123 (1930). See also: United States v. Allegheny County, 322 U.S. 174,184, 64 S.Ct. 908,914 (1944). The Court in Brushaber v. Union P. R. Co., 240 U.S. 493,504, 36 S.Ct.236,237 (1916) stated that what a legislature

calls a tax statute may compel

> the conclusion that it was not the exertion of taxation, but a confiscation of property; that is, a taking of the same in violation of the Fifth Amendment, or so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion.

There are three factors which prove that the money taken in this case is not a tax within the meaning of Mckesson, *supra*. First, the Louisiana Legislature did not view the bail bond charge as a tax. The Louisiana legislature failed to comply with even the most basic requirements of a tax in enacting the four unconstitutional statutes. Article 3, § 2 of the Louisiana Constitution of 1974 prohibits the enactment of taxes in regular sessions in odd numbered years. Yet the Legislature enacted the four unconstitutional statutes in regular sessions in both odd and even numbered years. Article 7, § 2 of the Louisiana Constitution of 1974 requires the vote of "two-thirds of the elected members of each house of the legislature" to enact a tax. Yet the Old Jefferson Statute (HB 1005, Act 158 of 1989) received only 57 votes in the House of Representatives, 13 votes less than two-thirds of the 105 Representatives. Clearly the legislature did not intend the bail bond charge as a "tax." It neither called it a tax or enacted it like a tax.

Second, the circumstances surrounding the application of the four statutes proves that they are not tax laws. Taxes are not waiveable for indigents at the discretion of a judge. The 2% charge, like a court cost type fee, was waiveable at the discretion of a judge. Taxes are collected by tax collectors. The 2% charge was exacted by District Judges. District Judges are not tax collectors. They can collect court cost type fees, but not taxes. Taxes are not collected under duress while the taxpayer is held hostage in jail. The executive branch of government can collect taxes. But it would be a violation of Fourteenth Amendment Due Process and separation of powers for a state legislature to impose upon state district judges the indignity of being tax collectors, even if some district judges are willing to accept such indignity.

Third, the 2% charge is not a "tax" within the meaning of McKesson, *supra*, because the object of the charge is not within the taxing power of government. There are few things that do not come within the far-reaching taxing powers of local, state, and federal government. Government can and does tax income, property, sales, and inheritance. Income, property, sales, and inheritance are all monetary interests that

are subject to the taxing power of government. It is difficult to think of a list of things that are not subject to the taxing power of government. One thing government has no power whatsoever to tax is the exercise of a liberty interest (as opposed to a monetary interest) by a presumed innocent arrestee. The 2% bail bond charge cannot be labeled a *tax* within the meaning of McKesson because the exercise of the fundamental constitutional right to bail is an object that is not within the taxing power of the Louisiana Legislature. A liberty interest like the fundamental right to bail is to a limited extent within the police power of government, but to no extent whatsoever within the taxing power of government.

Petitioners' state court petition alleged that in the alternative that the Louisiana tax refund statutes applied, then said statutes (LSA-R.S. 47:1481, et seq.) are unconstitutionally vague and ambiguous under the Fourteenth Amendment. The state courts, without citing a single case or taking evidence, called the money a tax and then ruled that petitioners' do not have a cause of action to challenge the constitutionality of the tax refund statute on its face or as applied to petitioners. The tax refund statutes read in pertinent part:

> Any person who has a claim against the State of Louisiana for money erroneously paid into the State Treasury, or for any other claim, may present such claim to the board of tax appeals, in such form and together with such proofs as the board of tax appeals may require by its rules and regulations. The board shall duly examine into the justice, merits and correctness of each such claim presented to it, and shall officially pass thereon.

The tax refund statute applies to a claim "for money paid into the state treasury." The 2% charge was not paid into the state treasury. It was paid into funds controlled by the judiciaries in the three concerned parishes and never reached the state treasury. "The judges, en banc, of the Twenty-Fourth Judicial District Court, shall have control over the fund and all disbursements made therefrom." Old and New Jefferson Laws, Appendix, *infra*, p. A-16. When the 2% charge was returned to the arrestee in State v. Jones, *supra*, the check was drawn on the account of the "Orleans Parish Criminal District Court Cost Fund." (See Appendix, *infra*, p.A-20-p.A-21). The Louisiana Supreme Court's grant of supervisory and remedial writs in State v. Jones proves that the Court recognized the constitutional issues raised by the failure of the criminal court to return Jones' money.

> This case is remanded to the trial court and it is hereby ordered to expeditiously conduct an evidentiary hearing on plaintiff's motion and to decide the constitutional issues raised. Id.,521. (See Appendix, *infra*, p. A-22).

One Justice dissented from the Court's order "believing the matter is moot because of the federal court order."[3] Id. After Jones' writ application was granted his money was returned. The Louisiana Supreme Court subsequently refused to grant certiorari in petitioners' case even though the lower courts failed to order the return of petitioners' money, grant an evidentiary hearing, or decide the federal constitutional issues.

In addition to covering a claim "for money paid into the state treasury," the tax refund statute purports to apply to "any other claim." The Court in Stromberg v. California, 283 U.S. 359,369, 51 S.Ct. 532,536 (1931), stated that:

> A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment.

The phrase and "any other claim" is much too vague and ambiguous to be construed as requiring the filing of a claim with a tax board by arrestees in a criminal proceeding who are coerced into paying 2% of the amount of their bail bond into a fund controlled by the district judges to obtain pretrial release.

---

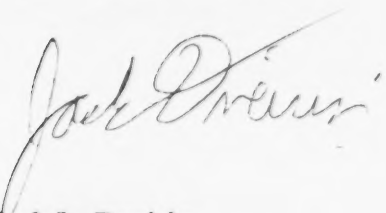
[3]The "federal court order" referred to is Augustus v. Roemer, *supra*.

If the United States Constitution requires that an unconstitutional excise tax has to be refunded (McKesson, *supra*), and interest on an interpleader's deposit has to be turned over to creditors (Webb's Fab. Pharmacies, Inc. vs. Beckwith, *supra),* then surely the money taken under duress from presumed innocent arrestees as a commission to the judiciary for allowing the exercise of a fundamental right to freedom has to be returned. What happened to petitioners was not the exertion of taxation, but a confiscation of property. At the very least, it was "so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion." Brushaber v. Union P. R. Co., *supra*, 240 U.S., 504.

CONCLUSION

Petitioners have stated a cause of action for return of their money. Their petition for certiorari should be granted.

Respectfully submitted:



Jack L. Dveirin
Counsel Of Record

Samuel S. Dalton
P.O. Box 10501
Jefferson, La 70181
(504) 835-4289

Attorneys For Petitioners

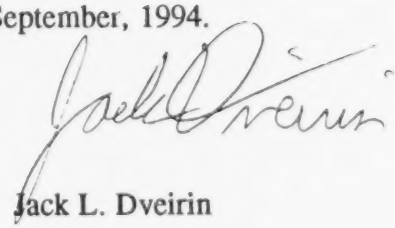
CERTIFICATE OF SERVICE

I, Jack L. Dveirin, one of the attorneys for petitioners, do hereby certify that I have this day served a true and correct copy of the foregoing Writ of Certiorari to the following counsel:

Patricia Nally Bowers, counsel for the judges of Orleans, Jefferson, and Terrebonne Parishes, and the State of Louisiana, 201 St. Charles Avenue, Suite 2505, New Orleans, LA 70170 ;

Henri Wolbrette, counsel for the judges of Jefferson Parish, 643 Magazine Street, New Orleans, LA 70130,

This, the 21st day of September, 1994.



Jack L. Dveirin

APPENDIX

THE SUPREME COURT OF THE STATE OF LOUISIANA

STEVEN AUGUSTUS, ET AL

VS.

STATE OF LOUISIANA, THROUGH
ITS GOVERNOR, EDWIN EDWARDS, ET AL

NO. 94-C - 1084

IN RE: Augustus, Steven; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fifth Circuit, Number 93-CA-0890; Parish of Jefferson Twenty-Fourth Judicial District Court Div."D" Number 427-921.

June 24, 1994

Denied.

WFM
JCW
PH
CDK

CALOGERO, C.J. would grant the writ.

DENNIS, J. not on panel.

LEMMON, J. would grant the writ.

ORTIQUE, J. would grant the writ.

Supreme Court of Louisiana
June 24, 1994

S/FRANS J. LABRANCHE, JR.

Clerk of Court
for the Court

NOT DESIGNATED FOR PUBLICATION

STEVEN AUGUSTUS, ET AL 93-CA-890

VERSUS COURT OF APPEAL

STATE OF LOUISIANA, FIFTH CIRCUIT

THROUGH ITS GOVERNOR,

EDWIN, EDWARDS, ET AL STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT

IN AND FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA

NUMBER 427-921

HONORABLE JULIAN E. BAILES, AD HOC JUDGE PRESIDING

THOMAS C. WICKER, JR.

JUDGE

MARCH 29,1994

(Court composed of Judges Thomas J. Kliebert, Edward A. Dufresne, Jr., and Thomas C. Wicker, Jr.)

(COUNSEL NAME AND ADDRESSES OMITTED)

AFFIRMED

This is a class action suit by 20 individual plaintiffs against the State of Louisiana, the governor of Louisiana, the judges of the district courts of Jefferson and Terrebonne Parishes, and the judges of the criminal district court of Orleans Parish, for refund of amounts assessed against. the plaintiffs pursuant to statutes imposing fees on bail bonds. The trial court dismissed the suit, finding plaintiffs' claims against the judges barred by judicial immunity and their claims against the State barred by sovereign immunity. Plaintiffs have appealed and defendants have answered the appeal. We affirm, for the reasons that follow.

The plaintiffs seek the refund of fees they paid in connection with bail bonds for release after arrest. The fees were levied by the judges of the respective courts pursuant to statutes which impose a charge of 2% on all commercial and property appearance bonds and $20 on all recognizance bonds. Those statutes are La. R.S. 13:994 (Jefferson Parish), La. R.S. 13:1384 (Orleans Parish), and La. R.S. 13:996 (Terrebonne Parish). The text of those statutes is set out in the Endnote hereto.[1]

The statutes were declared unconstitutional by a federal court in Augustus v. Roemer, 771 F. Supp. 1458 (E.D. La.

1991), a suit consolidating four separate actions in which the various plaintiffs sought relief pursuant to 42 U.S.C. § 1983. The federal judge found the laws imposing the bail bond fees unconstitutional on their face and granted a permanent injunction against enforcement of the statutes, in a judgment entered on July 28, 1991. The plaintiffs also had requested refund of the fees in that suit, but the federal court did not rule on that request and plaintiffs sought no further relief in the federal system.

The case at bar was filed in the state court on January 16, 1992. Sixteen of the 20 plaintiffs are Jefferson Parish residents, one is an Orleans Parish resident, and three are residents of Terrebonne Parish. One of the Jefferson Parish residents and two of the Terrebonne Parish residents are bail bondsmen who paid the fees in connection with bail bonds they underwrote. All the other plaintiffs either paid or promised to pay the fees on their own behalf. Plaintiffs assert a class action on behalf of all similarly situated persons and seek refund of the fees paid, or cancellation of their promises to pay such fees, under La. Civ. Code art. 2301, together with legal interest,

attorney's fees, and costs.[1] Plaintiffs also seek recognition of the federal court judgment and/or a declaration in the state court of the unconstitutionality of the statutes.

Defendants filed exceptions of prescription, res judicata, no cause of action and no right of action.

Defendants raised the exception of no cause of action on the basis that the statutes had already been held unconstitutional by the federal court, making further pursuit of that remedy in state court moot and making it unnecessary to decide whether the statutes violate the Louisiana constitution. They also argued that there is no cause of action against the defendant judges because of judicial immunity.

Defendants asserted the exception of no right of action on the basis of sovereign immunity, arguing that the claims asserted lie neither in contract nor in tort and, thus, are outside the scope of the state constitution's abrogation of sovereign immunity, absent express waiver thereof by legislative act.

As to prescription, defendants contended that challenges to the constitutionality of a state statute under the U.S.

---

[1]La. Civ. Code art. 2301 provides, "He who receives what is not due to him, whether he receives it through error or knowingly, obliges himself to restore it to him from whom he has unduly received it."

Constitution, 42 U.S.C. § 1983, and the Louisiana Constitution of 1974 are prescribed in one year. Defendants alleged that all the plaintiffs, except for plaintiffs Gomez and Saulsberry, knew or should have known of their claims, or had sufficient information to investigate them, more than one year prior to filing of the state court suit, because the latest date on which any of the individual plaintiffs (except Gomez and Saulsberry) paid or promised to pay the fees was October 10, 1990 and the instant suit was filed on January 16, 1992.

Finally, defendants advanced the exception of res judicata based on the existence of the federal court judgment, arguing that the parties had stipulated that the plaintiffs in the first federal court action would represent the class of all others similarly situated, without need of a formal class certification, and that any relief granted to those plaintiffs would be extended to the alleged class; further, that plaintiffs' request in the federal suit for refund of the fees, which was never decided by the federal court, precludes the state court's consideration of that issue.

The trial court's reasons for judgment addressed all the exceptions except res judicata.. The judge adopted the federal court's reasoning that the fees imposed by the bail bond statutes

are actually a form of tax, and he noted that the legislature had neither waived the state's immunity nor authorized the filing of this action. The court concluded that the collection of a fee authorized by a statute subsequently declared unconstitutional is not a tort against the person who paid the fee.

Assuming *arguendo* that collection of such a fee is a tort, the trial judge concluded that the tort prescriptive period of one year would run from the commission of the tort--that is, the date the fee was paid--and that the filing of the federal court action had not interrupted the running of the prescriptive period. However, he did not state specifically that the claims herein had prescribed. He ruled instead that the defendant judges have an absolute judicial immunity for such an alleged tort and that the claim against the State for restitution is barred by state sovereign immunity.

JUDICIAL IMMUNITY

When an official performs a function integral to the judicial process or a traditional legislative function, the official is absolutely immune from damage liability for acts performed in those capacities. *See* Moresi v. Dept. of Wildlife Fisheries, 567 So.2d 1081 (La. 1990). The defendant district judges were clearly performing functions integral to the judicial process

when they set the bonds on which the fees were assessed.

Plaintiffs concede they are not entitled to damages, but contend judicial immunity is inapplicable. Instead, they assert their cause of action is for a mandamus or a mandatory injunction ordering the judges, in their administrative capacities, to return money

There is no statutory authorization, however, for refund of the bail bond fees. Accordingly, there is no provision mandating the judges to return the fees and a mandatory injunction therefore is inapplicable.

SOVEREIGN IMMUNITY

La.Const. Art. XII, § 10 provides, in pertinent part:

> **A) No Immunity in Contract and Tort.** Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.
>
> **B) Waiver in Other Suits.** The legislature may authorize other suits against the state, a state agency, or a political subdivision. A measure authorizing suit shall waive immunity from suit and liability.

Under our constitution, thus, the only types of suits in which the state's sovereign immunity has been waived are suits in contract or in tort. Suits on other grounds must by approved by the legislature.

This is not a suit in contract. Plaintiffs argue that it is a suit for a "constitutional tort." We do not agree.

In August v. Roemer, supra, the federal district court analyzed the bail bond fee and concluded that it was a type of tax. We agree, and adopt that analysis. What plaintiffs seek is in effect a tax refund. A claim for a tax refund is not a tort claim. Plaintiffs have not cited, and we have not discovered, any statute under which the legislature has authorized suits against the state for refund of such a tax. Accordingly, the trial court properly concluded this is the type of action in which a plaintiff must seek legislative approval before proceeding against the State, as required by La.Const. Art. XII, § 10(B). Legislative approval was not obtained; therefore, the suit properly was dismissed.

In conclusion, we note that after the appellants' brief was filed in this court, defendants filed a Motion to Strike or for Alternate Relief. That motion hereby is denied as moot.

Having decided the case on the foregoing grounds, it is

unnecessary to address the other arguments of the appellants. Accordingly, the judgment hereby is AFFIRMED. Costs of this appeal are assessed against the plaintiffs.

AFFIRMED.

ENDNOTES[2]

2 THE ENDNOTES, CONSISTING OF THE FOUR STATUTES INVOLVED IN THIS LITIGATION, HAVE BEEN OMITTED. HOWEVER, THEY APPEAR ON PAGES A-16 TO A-19 OF THIS APPENDIX, INFRA.

24TH JUDICIAL DISTRICT COURT

STATE OF LOUISIANA

STEVEN AUGUSTUS, ET AL

VS .

STATE OF LOUISIANA, ET AL

No. 427-921, DIV. "D"

REASONS FOR JUDGMENT

Herein plaintiffs filed suit against the State of Louisiana and certain elected judges of Orleans Parish, Jefferson Parish and Terrebonne Parish.

Plaintiffs have amended and supplemented their original petition, however, as viewed by this court, the entirety of the amended and supplemental petition adds no allegations of fact, but on the contrary, are mere conclusions of law and conclusions of the pleader.

The legislature has not waived the state's immunity nor authorized the filing of this action. The claim attempted to be asserted is the recovery of bail bond fees which are actual]y a form of tax imposed on the furnishing of an appearance bond for the appearance in court of defendants charged with commission of crimes in the respective jurisdictions.

Heretofore the plaintiffs filed suit in federal court

attacking the constitutionality of the respective statutes which imposed the fees or tax. The federal court rendered judgment in favor of plaintiffs holding that the statutes were unconstitutional. The ruling of the federal court is binding on the State of Louisiana and on the judges of the affected courts.

The defendants have filed, among other exceptions, exceptions of prescription, no cause of action, and no right of action.

The plaintiffs argue that the effect of the collection of bond fees was the commission by the judges of constitutional tort. To denominate this collection a tort in the manner in which plaintiffs seek to have the benefit of Louisiana Constitution of 1974, Article 12, Section 10 (A), which states:

> Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.

Plaintiffs have cited no case to this court which holds that the collection of a fee authorized by a statute, subsequently declared unconstitutional, is a tort against the person who paid the fee.

Defendants' Exception of Prescription

However, assuming arguendo, that such a collection is a tort, the prescriptive period is one year from the commission of

the tort. This prescriptive period has not been timely interrupted. The filing of an action in federal court does not interrupt the running of a state prescriptive period. See Ford vs. Stone, 599 F.Supp. 693 (M.D.La. 1984), affirmed 774 F.2d 1158 (5th Cir. 1985).

Plaintiffs claim a three year prescriptive period under Civil Code article 3494 (1). Their reliance on this article of the Civil Code is mislaid. In that article the recipient of the liberation of the obligation is not the state or public official but rather the debtor of the fee or emolument owed.

Exception of No Cause of Action
and
Exception of No Right of Action

The defendant-judges have filed an exception of no cause of action to the action herein sought as a tort. This exception is sustained on the ground that the judges have an absolute judicial immunity for such an alleged tort.

The defendant-State of Louisiana has filed an exception of no right of action directed toward plaintiffs' claim against funds of the state under Civil Code Article 2301. The State of Louisiana under Louisiana Constitution of 1974, Article 12, Section 10 (B) has immunity from suit until such time as the legislature may authorize such an action.

In other words the tort claim by the plaintiffs ' against the the (sic) judges is barred by judicial immunity, the claim for rstitution (*sic*) against the state for fees paid is barred by the above cited state sovereign immunity.

For the foregoing reasons, the demands of the plaintiffs are rejected, and this suit is dismissed at plaintiffs' cost.

Natchitoches, Louisiana, this 9th day of August, 1993.

S/JULIAN E. BAILES
Judge ad hoc

L.R.S. 13:994, applicable to Jefferson Parish, provides in pertinent part:

> B. (1) In additional to all other fees or costs now or hereafter provided by law, there is hereby imposed a fee on each bail bond issued which is conditioned upon the appearance of the defendant in a criminal matter in the Twenty-Fourth Judicial District, including cash, property, and appeal bonds, in the amount of two percent of the face value of the bond or twenty dollars, whichever is the greater amount. The fee shall be paid by the bondsman who issues the bail bond, unless otherwise provided herein. The fee shall apply to bail bonds for all criminal offenses, except traffic offenses and ordinance violations which may be tried in courts of limited jurisdiction within the district. This is imposed for the purpose of funding the administration of criminal justice, including the forfeiture of such bonds.
>
> (2) The fee shall be paid by the defendant when a cash or property bond is posted. If the defendant is released on his own recognizance, the fee shall be twenty dollars. When the court finds the defendant is indigent and entitled to have counsel appointed, the court may waive the fee on any bond that was not issued or posted by a professional bondsman. The fee herein collected shall be refunded to the defendant if he is determined to be not guilty or if the charges are dismissed. [**Emphasis added. See note on the top of page A-17, *infra*.**]*
>
> (3) The judges, en banc, shall by local rule provide procedures for the timely collection, deposit, and accounting of the bail bond fee.
>
> C. The clerk of court and the sheriff shall place all sums collected or received under this Section in a separate account to be designated as the Judicial Expense Fund for the Twenty-Fourth Judicial District Court. The judges, en banc, of the Twenty-Fourth Judicial District shall have control over the fund and all disbursements made therefrom. They shall cause to be conducted annually an audit of the fund and the books and where it shall be available for public inspection.

* Enacted by Act 158 of 1989, eff. Sept. 3, 1989. L.R.S. 13:994(8) was amended in 1990 to delete the last sentence of subparagraph B(2) (which provided for refund of the fee to defendants determined to be not guilty or if the charges were dismissed). Act 72 of 1990, eff. Sept. 7, 1990.

L.R.S. 13:1384, applicable to Orleans Parish, provides:

A. In those parishes of five hundred thousand or more population, there is hereby imposed a fee on each bond issued which is conditioned upon the appearance of the defendant in a criminal matter, including cash, property, and appeal bonds, in the amount of two percent of the face value of the bond or twenty dollars, whichever is the greater amount. The fee is to be paid by the bondsman who issues the bail bond, unless otherwise provided herein. The fee shall apply to bail bonds for all criminal offenses, except traffic offenses and municipal offenses which may be tried in the municipal or traffic courts in such parishes. This fee is imposed for the purpose of funding the administration and forfeiture of such bonds .

B. The fee shall be paid by the defendant when a cash or property bond is posted. If the defendant is released on his own recognizance the fee shall be twenty dollars. When the court finds the defendant is indigent and entitled to have counsel appointed, the court may waive the fee on any bond that was not issued or posted by a professional bondsman.

C. The criminal district court for any such parish shall be court rule provide procedures for the timely collection, deposit, and accounting of the fee imposed by this Section. All fees collected shall be deposited in the criminal court cost fund of the criminal district court of any such parish.

Enacted by Act 419 of 1988, eff. Sept. 9, 1988.

L.R.S. 13:996, applicable to Terrebonne Parish,

in pertinent part:

> B.(l) In addition to all other fees or costs now or hereafter provided by law, there is hereby imposed a fee on each bail bond issued which is conditioned upon the appearance of the defendant in a criminal matter in the Thirty-second Judicial District, including cash, property, and appeal bonds, in the amount of two percent of the face value of the bond or twenty dollars, whichever is the greater amount. The fee shall be paid by the bondsman who issues the bail bond, unless otherwise provided herein. The fee shall apply to bail bonds for all criminal offenses. This fee is imposed for the purpose of funding the administration and forfeiture of such bonds.
>
> 2) The fee shall be paid by the defendant when a cash or property bond is posted. If the defendant is released on his own recognizance, the fee shall be twenty dollars. If the court finds the defendant is indigent and entitled to have counsel appointed, the court may waive the fee on any bond that was not issued or posted by a professional bondsman.
>
> (3) The judges, en banc, shall by local rule provide procedures for the timely collection, deposit, and accounting of the bail bond fee.
>
> C. The clerk of court shall place all sums collected or received under this Section in a separate account to be designated as the Judicial Clerk's Fund for the Thirty-second Judicial District Court. The judges, en banc, of the Thirty-second Judicial District shall have control over and administer the funds and all disbursements made therefrom.

Enacted by Act 72 of 1900, eff. Sept. 7, 1990.

State of Louisiana
DEPARTMENT OF JUSTICE

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

7TH FLOOR
2-3-4 LOYOLA BUILDING
NEW ORLEANS 70112-2096

June 21, 1991

Denise LeBoeuf, Esq. BY HAND
Glass & Reed
338 Lafayette Street
New Orleans, LA 70130

RE: STATE OF LOUISIANA vs. JOHN JONES AND CAROL JONES

Dear Denise:

Enclosed please find the check of the Orleans Parish Criminal District Court for $1500.00 returning the La. R.S. 13:1384 bond fee paid by Carol Jones in connection with the above-captioned matter.

It is the contention of the judges of the Orleans Parish Criminal Court and the Attorney General that this tender brings the case to a close on the basis of mootness as the only matter pending before the Court is your Motion for Return of the Bail Bond Fee. I understand from my conversation with John Reed and Judge Huff you take the position that you are entitled to argue the constitutionality of the bond fee statute despite the fact that tender of this check moots your underlying motion. I will see you on June 28, 1991 at 9:00 AM in Judge Winsberg's Section so that we may argue these issues to Judge Huff.

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney General

PATRICIA HALLEY BOWERS
Assistant Attorney General

PNB:atb
Enclosure

cc: Honorable Frank A. Marullo

ORLEANS PARISH CRIMINAL DISTRICT COURT

COST FUND

% JUDICIAL ADMINISTRATOR

2700 TULANE AVENUE, SUITE 200

NEW ORLEANS, LOUISIANA 70119

1009

6/24 19 91

14-6/550

PAY TO THE ORDER OF CAROL JONES $ 1,500.00

*****ONE THOUSAND FIVE HUNDRED AND 00/100******* DOLLARS

First NBC First National Bank Of Commerce

New Orleans, Louisiana 70119

⑈001009⑈ ⑆065000029⑆ 7003 41536⑈

THE SUPREME COURT OF THE STATE OF LOUISIANA

STATE OF LOUISIANA

VS.

JOHN JONES, CAROL JONES

NO. 91-KD - 1569

IN RE: Jones, John; Jones, Carol: - Defendant(s); Applying for Supervisory and / or Remedial Writs; Parish of Orleans Criminal District Court Div."C" Number 323-569.

October 4, 1991

Granted. This case is remanded to the trial court and it is hereby ordered to expeditiously conduct an evidentiary hearing on plaintiff's motion and to decide the constitutional issues raised.

LFC
PFC
WFM
JLD
HTL

WATSON,.J. would deny the application, believing the matter is moot because of the federal court order.

HALL, J. dissents from the order.

Supreme Court of Louisiana
October 4, 1991

S/FRANS J. LABRANCHE, JR.
Clerk of Court
for the Court